the statute of the state would not be required to keep its highways in a condition suitable for travel by means of the bicycle, held that the plaintiff was entitled to recover because the dangerous embankment was not guarded in such a way as to afford adequate protection to travelers by the methods of conveyance mentioned in the statute. "The plaintiff," said the court, "being a traveler upon the highway, * * * notwithstanding she was riding on a bicycle, was entitled at least to a highway in condition suitable for ordinary travel and to damages for injuries happening to her by reason of any unsuitableness of the highway for such travel." It has been held by the Supreme Court of Michigan that "reasonable care in the construction and maintenance of highways for ordinary vehicles, such as wagons and carriages, is the measure of duty resting upon municipalities" under the statute, and that in the absence of further legislation, the courts will not extend the duty so as to make it necessary for the public authorities to provide suitable highways for bicycles and vehicles of like character. *Leslie* v. *Grand Rapids,* 120 Mich. 28, 78 N. W. Rep. 885. See, also, *Sutphen* v. *North Hamstead,* 80 Hun 409, 30 N. Y. Supp. 128; *Rust* v. *Essex,* 182 Mass. 313, 65 N. E. Rep. 397; *Wheeler* v. *City of Boone,* 108 Iowa 235, 78 N. W. Rep. 909. It has been held by the Supreme Court of Washington that a city which exercises its option to construct a bicycle path along the side of one of its streets, is bound to maintain it in a condition reasonably safe for the purpose for which it is intended. *Prather* v. *City of Spokane,* 29 Wash. 549, 70 Pac. Rep. 55, 59 L. R. A. 346.

While the law of the present time in regard to damages suffered through accidents to automobiles and other like vehicles, by reason of imperfections in highways and streets, is undoubtedly that a recovery can only be had when the imperfection is of such a nature as to make the highway or street unsafe for travel by the ordinary modes of conveyance, yet it is not improbable that the growing use of the self-impelled machine may in the future lead to an extension of the rule governing liability. But a change in this regard will probably come through legislation and not by any material modification by the courts of the present doctrine. H. B. H.

THE STATUTE OF LIMITATIONS AND AMENDED COMPLAINTS.—Plaintiff brought action for damages for the death of his intestate in the mine of the defendant. In his original complaint, he sought to recover because of the failure of the defendant to provide a reasonably safe place in which his intestate might work. Subsequently he amended his complaint by adding a count under which he sought to recover because of the negligence of one Dunn, a servant of the defendant, whose orders the intestate was bound to obey, in ordering the intestate into a mine when it was filled with suffocating gas. The original complaint was based on common law liability of the defendant. The amendment was based on a statutory liability. (Code of 1896, § 1749, subdiv. 3). The Statute of Limitations was interposed as a defense to the amendment. If the amendment were considered as filed at the time of the original complaint, the Statute of Limitations had not run. If considered as filed at the time it actually was filed, the

Statute of Limitations had run. *Held,* that as no new cause of action was stated by the additional count, the Statute of Limitations had not run. *Alabama Consol. Coal & Iron Co.* v. *Heald* (1908), — Ala. —, 45 So. Rep. 686.

The decision in the principal case was rendered by a divided court, three judges dissenting. The point raised is one on which the courts are in hopeless confusion. It is generally conceded that an amendment will be considered as filed when the original complaint was filed unless a new cause of action is stated. But the courts differ as to when a new cause of action is stated. Various tests have been laid down to determine the identity of the causes of action. Would a recovery under the original petition bar a recovery under the amended petition? *Rhemke* v. *Clinton,* 2 Utah, 230. Would the same evidence support both of the pleadings? *Lottman* v *Barnett,* 62 Mo. 159. Is the measure of damages the same in each case? *Hurst* v. *Detroit City Ry.,* 84 Mich. 539. Are the allegations of each subject to the same defenses? *Lumber Co.* v. *Water Co.,* 94 Tex. 456, 61 S. W. 707. See 1 A. & E. ENCY. PL. AND PR. p. 556. But the courts differ as to the decisiveness of these tests and as to their application. When the beneficiary is changed, a new cause of action is stated. *Ry. Co.* v. *Hooper,* 92 Fed. 820, 35 C. C. A. 24. Amending a complaint which founded a right on a license to a right founded on a statute, is stating a new cause of action. *Sims* v. *Field,* 24 Mo. App. 557. When liability is charged as a common carrier in the original declaration and an amendment is added charging liability as a warehouseman, a new cause of action is stated. *Ry. Co.* v. *Ledbetter,* 92 Ala. 326, 9 So. 73. *People* v. *Judge,* 35 Mich. 227. Compare *Ry. Co.* v. *Woods,* 105 Ala. 561, 17 So. 41, relied on in the majority opinion with *U. P. Ry.* v. *Wyler,* 158 U. S. 285, 15 Sup. Ct. 877, 39 L. Ed. 983, relied on in the dissenting opinion. Compare also the following cases in which it was held that no new cause of action was stated and that therefore the amendment dated from the filing of the original complaint: *Frost* v. *Witter,* 132 Cal. 421, 64 P. 705; *Roberts* v. *Leak,* 108 Ga., 806, 33 S. E. 995; *Cicero* v. *Bartelme,* 212 Ill. 256, 72 N. E. 437; *Ry. Co.* v. *Bergschicker,* 162 Ind. 108, 69 N. E. 1000; *Padden* v. *Clark,* 124 Ia. 94, 99 N. W. 152; *Louisville, etc. R. R. Co.* v. *Pointer's Adm'r,* 113 Ky. 952, 69 S. W. 1108; *Zier* v. *Chesapeake Ry Co.,* 98 Md. 35, 56 A. 385; *Pratt* v. *Circuit Judge,* 105 Mich. 499, 63 N. W. 566; *Bruns* v. *Schreiber,* 48 Minn. 366, 51 N. W. 120; *Courtney* v. *Blackwell,* 150 Mo. 245, 51 S. W. 668; *Seeley* v. *Insurance Co.,* 72 N. H. 49, 55 A. 425; *Wilhelm's Appeal,* 79 Pa. St., 120; *Love* v. *Southern Ry. Co.,* 108 Tenn. 104, 65 S. W. 475, 55 L. R. A. 471; *Cotter, etc. Co.* v. *Parks,* 80 Tex. 539, 16 S. W. 307; *Kuhn* v. *Brownfield,* 34 W. Va., 252, 12 S. E. 519, 11 L. R. A. 700; *Guild* v. *Parker,* 43 N. J. L. 430; *Townes* v. *Dallas Mfg. Co.,* — Ala. —, 45 S. 696, with the following cases in which it was held that a new cause of action was stated: *Ry. Co.* v. *Smith,* 81 Ala. 229, 1 S. 723; *Lambert* v. *McKenzie,* 135 Cal. 100, 67 P. 6; *Ry. Co.* v. *Bhymer,* 214 Ill. 579, 73 N. E. 879; *Blake* v. *Minkner,* 136 Ind. 418, 36 N. E. 246; *Patten* v. *Waugh,* 122 Ia. 302, 98 N. W. 119; *Thompson* v. *Beeler,* 69 Kan. 462, 77 Pac. 100; *Hamilton* v. *Thirston,* 94 Md. 253, 51 A. 42; *Bricken* v. *Cross,* 163

Mo. 449, 64 S. W. 99; *Buerstetta* v. *Bank*, 57 Neb. 504, 77 N. W. 1094; *Butt* v. *Carson*, 5 Okla., 160, 48 P. 182; *Montgomery* v. *Shaver*, 40 Ore. 244, 66 P. 923; *Philadelphia* v. *R. R. Co.*, 203 Pa. St. 38, 52 A. 184; *Mayo* v. *Ry Co.*, 43 S. C. 225, 21 S. E. 10; *Iron & Coal Co.* v. *Broyles*, 95 Tenn. 612, 32 S. W. 761. S. W. D.

A VENDEE'S RELIANCE ON HIS VENDOR'S REPRESENTATIONS.—How far a vendee of property can rely upon the representations of his vendor in regard to the property is interestingly presented in the case of *Abmeyer* v. *First National Bank of Horton* (1907), — Kan. —, 92 Pac. Rep. 1109. It is a general rule that a person seeking to enforce a right should not have by his negligence produced the injury complained of. The court in the principal case seems to think the question of negligence should be given little weight when fraudulent representations are in question.

The facts of this case were briefly these:

The defendant was a man with little or no knowledge of farming; Wright, his vendor, was a farmer and could estimate the quantity of corn standing in a field with reasonable certainty. Defendant bought the corn while standing and before it had matured. At the time of the sale, the vendor, Wright, represented that there were 1,300 bushels of the grain, but it turned out that there were but 431 bushels. The defendant took with him at the time a friend who also was a farmer and who inspected the corn before the deal was closed; but the evidence did not disclose whether the friend agreed with the vendor in the estimate made or not. The action was brought on a promissory note given for the purchase price which was negotiated to plaintiff, and defendant seeks to recoup his damages suffered from the alleged fraud. The trial court directed a verdict for the plaintiff on the ground that there was no evidence that plaintiff had any knowledge or notice of any fraud or claim of fraud in the inception of the note. The Supreme Court held that the trial court erred in taking the case from the jury; saying there was some evidence tending to show fraud in the inception of the note which ought to have gone to the jury; and which, if found to have been true, would have placed on plaintiff the burden of proving that it was an innocent purchaser.

In giving its opinion of the law to govern the trial court, the court in reply to plaintiffs contention that defendant was negligent in relying upon the representations of the vendor, said that one who cheats another by a falsehood, intended to deceive, was hardly in a position to say that his victim ought not to have believed him. The court based this statement expressly on the case of *Speed* v. *Holingsworth*, 54 Kan. 436, 38 Pac. Rep. 496; wherein it was said that the trend of modern decisions is toward the doctrine that one who has defrauded another cannot say in defense that the other might, with due diligence, have discovered the falsity of the representations, and that it mattered not that the other was "in some loose sense" negligent.

In the specially concurring opinion in the principal case, SMITH, J., disagreed with the majority's enunciation of the law. He contended that, if